

9-76.000

TRANSPORTATION

9-76.010 Overview

9-76.050 Transportation -- General Policy

9-76.110 Transportation -- Aviation Policy -- Settlement Authority

9-76.210 Transportation -- Motor Carrier Safety -- Policy

9-76.310 Transportation -- Railroad Safety -- Policy -- Supervisory and Investigatory Authority

9-76.340 Transportation -- Railroad Safety -- Civil Penalty Provisions

9-76.010

Overview

This chapter focuses on civil and criminal litigation conducted under the transportation provisions of Title 49, United States Code including the Federal Aviation Act of 1958, the Motor Carrier Safety Regulations, the Hazardous Materials Transportation Act, and a number of railroad safety statutes.

9-76.050 Transportation -- General Policy

District Court litigation, both civil and criminal, under various transportation provisions contained in Title 49, United States Code, is infrequent. The requisite expertise for the interpretation of these statutes resides with attorneys and other personnel within the agency or department responsible for securing compliance with the applicable statute. Accordingly, the United States Attorney should find it helpful to rely on the agency or departmental attorney for assistance with any referral, and should consider the views, both legal and factual, of the agency or department. A request for assistance from the Criminal Division should be solicited only in: (1) substantial cases; (2) cases in which there is a disagreement with agency personnel regarding whether or not to proceed; and (3) cases involving a national policy decision.

9-76.110 Transportation -- Aviation Policy -- Settlement Authority

United States Attorneys are authorized to effect settlement of the civil penalties provided in 49 U.S.C. § 46301 *et seq.* (formerly 49 U.S.C. § 1471) without the prior approval of the Criminal Division (Fraud Section). In place of the previously required prior approval of the Criminal Division, United States Attorneys are directed to consult with the FAA or its parent organization, the United States Department of Transportation (DOT), as appropriate, regarding settlement proposals. The FAA or DOT may seek Criminal Division review if it believes such review would be helpful to the settlement of the case.

The relatively small amount of money involved in many FAA civil penalty cases must not be a consideration in evaluating the merits of such cases. A civil penalty action is not one to collect a trivial amount owed to the government, but rather it is an important part of the federal enforcement effort to ensure aviation safety.

For additional information on this section, see the Criminal Resource Manual at 2004.

9-76.210 Transportation -- Motor Carrier Safety -- Policy

A vigorous enforcement program is followed in regard to offenses which endanger the public on the highways. The United States Attorney should advise the Federal Highway Administration of all significant developments in any such case he is handling. Supervision, if requested, of criminal prosecutions under these Acts is assigned to the Fraud Section of the Criminal Division.

For additional information on this section, see the Criminal Resource Manual at 2005.

9-76.310 Transportation -- Railroad Safety -- Policy -- Supervisory and Investigatory Authority

Supervision of criminal prosecutions and civil penalty actions under these Acts is assigned to the Fraud Section of the Criminal Division. The Federal Railroad Administration (FRA) will refer all cases directly to the appropriate United States Attorney, except cases involving novel questions of law. The United States Attorney should advise the Chief Counsel, FRA of all significant developments in a case, including the filing of an information or complaint, the docket number, the arraignment, the trial date, the position taken by the railroad and, the proposed settlement of the case, etc. Copies of such correspondence should be furnished to the Fraud Section of the Criminal Division, when significant or unusual developments or matters are involved. The Criminal Division should, of course, be promptly notified of adverse decisions and of cases where an appeal is taken by the defendant.

Investigations of all cases arising under the railroad safety statutes are conducted by the Federal Railroad Administration.

Additional background information on this section is in the Criminal Resource Manual at 2006 and 2007 (criminal penalty provisions). *See also* USAM 9-76.340.

9-76.340 Transportation -- Railroad Safety -- Civil Penalty Provisions

Due to the mandatory nature of the Federal Claims Collection Act (31 U.S.C § 3711) and the absolute duties which they impose upon carriers, the Department regards the penalties under the Act, although recoverable in civil proceedings, as not being merely civil obligations but penal sanctions, and accordingly does not accept compromise settlements of less than the full statutory penalty on each count with costs, to which the government is entitled as a matter of right. *See* 28 U.S.C. § 1918(a).

For additional information on this section, see the Criminal Resource Manual at 2008.